

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.925 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

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PATEL RAJENDRAKUMAR KHODIDAS

Versus

SURENDRANAGAR DISTRICT PANCHAYAT

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Appearance:

MR TRILOK J PATEL for Petitioner No. 1-2

MR HS MUNSHAW for Respondent No. 1

MR NAGESH SOOD, AGP for Respondent No. 2-3

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CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 02/09/2004

#### ORAL JUDGEMENT

1. In this petition under Article 226 of the Constitution of India, the petitioners have challenged the legality and validity of the order dated 22-09-2003 passed by the District Development Officer, Surendranagar in returning the application submitted by the petitioners for grant of non-agricultural residential use permission and by directing the petitioners to pay the premium for converting the land from agricultural to non-agricultural building use permission as per the Rules. It is also further prayed to direct the District Development Officer, Surendranagar to consider the application dated 21-09-2002 for grant of non-agricultural residential use

permission.

2. Few facts are necessary for determination of the present petition.

2.1 One Nathabhai Shankarbhai was the owner of the land bearing Survey No.235 admeasuring 5 Acres and 23 gunthas of Village Kharaghoda, Taluka Dasada, District Surendranagar. The said land was agricultural restricted new tenure land. The original land owner submitted an application before the competent authority for removing the restriction and converting the land from new tenure to old tenure for agricultural purpose and accordingly, by order dated 14-04-1983, the land was converted from new tenure to old tenure for agricultural purpose. It appears that as the petitioners wanted to submit an application for non-agricultural use permission and wanted to sale the land in question for non-agricultural use, the original land owner submitted an application on 03-05-1983 for fixing the premium. The said copy is at Annexure-B to the affidavit-in-reply filed by Dy. Collector, Dhrangadhra. Pursuant to the said application dated 03-05-1983, the Assistant Collector, Dhrangadhra informed the petitioners with regard to fixing the premium by communication dated 05-05-1983, which the petitioners has already paid. It is pertinent to note that at the relevant time the application of the original land owner was not for grant of non-agricultural use permission but the same was only for the purpose of fixing the premium.

2.2 It is also pertinent to note that there was no order passed in the year 1983 granting non-agricultural use permission to the original land owner. It seems that the original land owner has sold the land in question to the petitioners in the year 2000 and necessary entry in the revenue record came to be mutated in favour of the petitioners on 18-10-2000 vide Entry No.1341. Thereafter the petitioners moved an application on 21-09-2002 before the District Development Officer, Surendranagar for grant of non-agricultural use permission as the land in question is an agricultural land. The District Development Officer, Surendranagar vide communication dated 22-09-2003 returned the application of the petitioner dated 21-09-2002 by directing the petitioners to pay the premium for non-agricultural use permission as according to the District Development Officer, Surendranagar as per the Government Resolution dated 20-05-1980 the premium is required to be paid on the basis of the market price prevailing at the time of making an application for

non-agricultural use permission. Against the said communication/order dated 22-09-2003, the petitioners have preferred the present petition.

3. Mr.J.M.Patel, learned advocate appearing on behalf of the petitioners, has submitted that in view of the order dated 05-05-1983 (Annexure-A to the petition) as the original land owner has already paid the premium, the insistence on the part of the District Development Officer, Surendranagar to pay the premium again is absolutely illegal and even contrary to the Government Resolution dated 20-05-1980. He has further submitted that as per Clause 4 of the aforesaid Government Resolution, the premium is required to be paid only once when, for the first time, the land was converted from agricultural to non-agricultural purpose and, therefore, when the petitioners has already been paid the premium pursuant to the order dated 05-05-1983, there is no question for making payment of premium again.

4. This Court (Coram: A.R.Dave, J) admitted the present petition on 05-03-2004 and notice as to interim relief was issued. Thereafter, this Court passed an order dated 16-04-2004 granting interim relief, which reads as under:-

" Heard the learned advocates.

2. Looking to the facts of the case, it is directed that the petitioners shall give an undertaking to the respondent to the effect that if the petitioners fail in the petition and ultimately it is found that the petitioners are liable to pay the premium to the respondent for converting their land in question into N.A. land, the petitioners shall make payment of the amount payable by them. Moreover, the petitioners shall give security to the satisfaction of the respondent to the tune of Rs.1 lakh within a period of one month from today.

3. On the aforesaid condition, implementation of the order dated 22nd September, 2003 is stayed and the issue with regard to grant of N.A. permission shall be re-examined by the respondent and without asking the petitioners to pay the premium again, the application shall be considered in accordance with law. The said application shall be decided as soon as possible and preferably within a period of four weeks from

the date of service of this order upon the respondent.

So as to know the progress and for filing affidavit-in-reply, hearing is adjourned to 21.6.2004.

Direct service is permitted.

Sd/-

(A.R. Dave, J.)"

5. As the aforesaid order was not complied with, explanation of the respondents was sought for and the respondents were directed to explain the reason for non-compliance of the order dated 16-04-2004. Thereafter, a resolution came to be passed on 14-07-2004 by the Executive Committee of the District Panchayat, Surendranagar and it was resolved to grant non-agricultural permission to the petitioners on payment of premium subject to the ultimate outcome of the present petition. As the aforesaid Resolution No.235 dated 14-07-2004 passed by the Executive Committee of the District Panchayat, Surendranagar was contrary to the interim order passed by this Court dated 16-04-2004, a last chance was given to the District Panchayat to comply with the direction issued by this Court on 16-04-2004 and ultimately a resolution came to be passed on 28-07-2004 being Resolution No.247 and non-agricultural use permission is granted in favour of the petitioners subject to the ultimate outcome of the present petition.

6. As per the order dated 16-04-2004 this Court directed the respondents to grant non-agricultural use permission without insisting for payment of premium on a condition that the petitioners should give security to the satisfaction of the respondent to the tune of Rs.1 lakh which the petitioners has already furnished.

7. Mr.J.M.Patel, learned advocate for the petitioners, has vehemently submitted that in the order/communication dated 05-05-1983 it is stated to pay premium, the petitioners are not required to pay any premium thereafter and, therefore, insistence on the part of the respondent - District Development Officer to pay the premium on the basis of the market price prevailing at the time of making an application for non-agricultural use permission is absolutely illegal and even contrary to the Government Resolution dated 20-05-1980. He has further submitted that once permission is obtained and restrictions under Section 43 of the Tenancy Act are removed, there is no question of making the premium

again. He has further submitted that the original land owner has required to make premium only once at the first instance when the non-agricultural use permission was granted and, therefore, it was submitted that communication dated 22-09-2003 returning the application submitted by the petitioners for grant of non-agricultural use permission for the purpose of putting up a residential construction is absolutely illegal and contrary to the Government Resolution dated 20-05-1980 and, therefore, he requested to direct the respondents to grant non-agricultural use permission without insisting for premium.

8. Mr.H.S.Munshaw, learned advocate for the respondent No.1 - District Panchayat, Surendranagar, has submitted that till date there is no order passed granting non-agricultural use permission. He has further submitted that the order dated 05-05-1983, upon which the reliance is placed by the petitioners, is not an order for granting non-agricultural use permission. He has further submitted that it is only an order fixing the premium and the application for non-agricultural use permission is made for the first time on 21-09-2002 and, therefore, as per the Government Resolution dated 20-05-1980, more particularly Clause 4, the petitioners are required to pay the premium on the basis of the market price as on 21-09-2002 i.e. the day on which the application for non-agricultural use permission is submitted. Therefore, it is submitted that the impugned communication/order dated 22-09-2003 is just and proper and in consonance with the Government Resolution dated 20-05-1983 and there is no illegality committed by the respondent No.1 - District Panchayat.

9. To know the correct position that whether by order dated 05-05-1983 the Assistant Collector, Dhrangadhra had in fact granted non-agricultural use permission or not, the Assistant Collector, Dhrangadhra and the Collector, Surendranagar were joined as party respondent Nos.2 and 3 in the present petition and notices were issued to them.

10. In response to the notice issued by this Court, Mr.Nagesh Sood, learned AGP, appears on behalf of respondent Nos.2 and 3 i.e. the Assistant Collector, Dhrangadhra and the Collector, Surendranagar. An affidavit-in-reply is filed by the District Development Officer, Surendranagar wherein it is specifically mentioned that the order dated 05-05-1983 is not the permission for non-agricultural use and it is only with regard to fixation of premium on the basis of the application submitted by the original land owner dated

03-05-1983 for fixation of premium for non-agricultural purpose. It is also specifically mentioned in the said reply that the original land owner has never applied for non-agricultural use permission before any of the appropriate authority earlier. It is also further submitted that as the application is submitted on 21-09-2002 for the first time for grant of non-agricultural permission, the petitioners are required to pay the premium on the basis of the market price as on 21-09-2002 i.e. the date on which the application is submitted for the grant of non-agricultural permission and are required to pay premium at the time of applying for non-agricultural use permission, therefore, requested to dismiss the present petition.

11. Heard the learned advocates appearing on behalf of the respective parties.

12. The petitioners have relied upon the order/communication dated 05-05-1983. From the bare reading of that order/communication it cannot be said that the same is an order granting non-agricultural use permission by communication dated 05-05-1983, there is no permission for grant of non-agricultural use permission. It is only a communication informing the original land owner fixing the premium. It is also pertinent to note that in fact there was no application submitted by the original land owner for grant of non-agricultural use permission. Therefore, there is no question to grant non-agricultural permission in the year 1983. Therefore, reliance placed by the petitioners upon communication/order dated 05-05-1983 is absolutely ill-founded. It is also an admitted position that the petitioners have for the first time made an application before the District Development Officer, Surendranagar for grant of non-agricultural use permission for construction of residential building on 21-09-2002 which is not disputed by the petitioners also. It is pertinent to note that in the application dated 21-09-2002 itself in Column 18 it is specifically mentioned by the petitioners that the application for non-agricultural use permission is made for the first time and that there is no non-agricultural use permission granted earlier. In that view of the matter, considering the Government Resolution dated 20-05-1980, more particularly Clause 4, the petitioners are required to pay premium at the time of making an application and to pay the premium on the basis of the market price prevailing at the time of making an application for non-agricultural use permission. As per the Government Resolution the premium is required to be paid at the first instance when the

land is converted from agricultural to non-agricultural. Under the circumstances, when the application is submitted for the first time on 21-09-2002 for the purpose of non-agricultural use the petitioners are required to pay premium on that day and the petitioners cannot get the benefit of the earlier fixation of premium more particularly except fixation of the premium nothing further was done in the year 1983. In fact as stated above there was no application submitted by the petitioners for grant of non-agricultural use permission in the year 1983. In that view of the matter the insistence on the part of the District Development Officer, Surendranagar to pay the premium at the time of making an application for non-agricultural permission cannot be said to be in any way illegal, arbitrary and contrary to the Government Resolution dated 20-05-1980. Under the circumstances there is no substance in the present petition and the same requires to be dismissed.

13. In view of the fact that pursuant to the interim order passed by this Court non-agricultural use permission is granted by the District Panchayat/District Development Officer to the petitioners without payment of premium and the same is granted subject to the ultimate outcome of the present petition. Now, in view of the dismissal of the present petition, the petitioners are directed to make the payment of premium for converting the land from agricultural to non-agricultural considering the market price prevailing at the time of making the application for non-agricultural permission i.e. on 21-09-200 within a period of 06 (six) weeks from today, failing which the non-agricultural use permission, which is granted in favour of the petitioners vide order 16-04-2004 by this Court shall stand cancelled automatically.

14. For the reasons stated above, the petition fails. Rule discharged. Interim relief granted earlier stands vacated forthwith subject to the aforesaid observations and directions. Sd/-

[ M.R.SHAH, J ]

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'Bhavesh'